IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/11/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.19957 OF 1998

C. Bright Gnana Singh,
6, Kasthuribai Street,
Gandhi Road, Choolaimedu,
Chennai 600 094. .. Petitioner

-Vs-

1. Agarwal Vidyalaya & Junior College,
Represented by its Correspondent,
54, E.V.K. Sampath Road,
Vepery, Chennai 600 007.

2. The Joint Secretary,
Central Board of Secondary Education,
1630/A, 15 Main Road, Anna Nagar West,
Chennai 40.

3. Chairman,
Central Board of Secondary Education,
Shiksha Kendra,
2, Community Center,
Preet Vihar,
Delhi 110 092. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

!For Petitioner : Mr.D. Hari Paranthaman

For Respondents : Mr.D. Haridas
Senior Counsel for
Mr.A. Ramesh Kumar

:J U D G M E N T

The petitioner has challenged the order of dismissal from service which has been confirmed by the appellate authority.

2. Respondent No.1 school was being run on Central Board of Secondary Education and was affiliated to Central Board of Secondary Education. The petitioner, who is a trained graduate teacher having B.Sc., B.Ed., qualification, was appointed as a Mathematics teacher under the respondent No.1 school by order dated 27.7.1984 on a consolidated pay of Rs.700/-. Subsequently, by order dated 10.6.1985 he was appointed as the Mathematics teacher on probation in the scale of pay applicable to a Trained Graduate Teacher and thereafter he was confirmed with effect from 1.6.1986. Subsequently, his pay was revised pursuant to IV pay commission. He was being assigned teaching work in Middle School, High School and Higher Secondary classes. In course of time, he was also kept in charge of N.C.C., of the school. In the month of March, 1990 he was orally informed that he would continue as a Secondary Grade teacher and after summer vacation, on 1.6.1990 he was shown against a Secondary Grade Teacher□s scale and the salary was accordingly reduced. Thereafter he was given classes in V, VI and VII without assigning any class in higher secondary school classes. Since the petitioner was asked to execute an agreement, he appealed to the Joint Secretary and went on making correspondence against his degradation. Ultimately, the petitioner filed W.P.No.15410 of 1990 challenging his degradation. It is the case of the petitioner that after receiving notice in the writ petition, the school authorities started issuing memos one after another magnifying certain trivial matters. Even the school authorities did not pay the increase in dearness allowance after the writ petition has been filed. The petitioner had given his reply to various memos issued against him explaining and denying the allegations. In the meantime the petitioner was also asked to take classes for Standard I and II and was asked to sign the attendance register kept for K.G. and Primary teachers. The petitioner at that stage had written letter dated 12.6.1991 requesting the school authorities to assign higher classes and expressing difficulty in handling I and II classes, as being a trained graduate teacher he was not trained to teach I and II class students and he had not undergone secondary grade training which is required for such classes. It is the specific averment of the petitioner that such letter came back with the endorsement □refused□. A similar letter dated 8.7.1991 also came back with an endorsement □refused□. It is obvious that there was an □undeclared cold war□. At that stage, the school took objection to some statements made by the petitioner in parent-teacher's meeting dated 9.7.1991 and issued memo dated 26.8.91. The reply dated 9.9.91 explaining the grievance of the petitioner was again returned with an endorsement □refused□. Subsequently, another memo was issued indicating that the petitioner was not properly conducting mathematics for I and II classes and the reply dated 4.10.1991 was also returned with the postal endorsement □refused□. At that stage, the petitioner filed appeal to the Joint Secretary, CGSC airing his grievance against the collar activities of the management. In the subsequent year, the petitioner was not assigned any class and even his name was not printed in the list of teachers in the school calendar and the petitioner was divested of his responsibility as a NCC teacher. In the aforesaid background, disciplinary proceeding was initiated against the petitioner. The petitioner in his reply had indicated that an impartial enquiry is to be held.

Originally one Mr. Palaniappan, former Law Secretary to Government of Tamil Nadu was appointed as the enquiry officer, but apparently he had not agreed and subsequently the petitioner was informed that the enquiry would be conducted by Sri. Veeraraghavan and Mrs. Meera Gupta, Advocates. It was informed that they would be enquiring into the charge memo dated 18.6.1992. The petitioner objected to the inclusion of Charge Nos.5 and 6, as such charges had never been placed in the original charge sheet. The petitioner also requested for list of witnesses and documents relied upon in the enquiry and had objected to the appointment of two enquiry officers. It was informed that S. Veeraraghavan would continue as the sole Enquiry Officer and Mrs. Meera Gupta would function as the Presenting Officer. The petitioner has further indicated that he had furnished his explanation relating to Charge Nos.5 and 6 and it should be decided that such charges would continue or not. The enquiry officer also directed to furnish list of witnesses and documents and they would continue with Charge Nos.5 and 6. On 3.4.93, the petitioner gave his explanation to charge Nos.5 & 6 and requested that such charges should be dropped. The enquiry officer directed the Management to go into the matter and also regarding Charge Nos.5 & 6 directed to furnish list of witnesses and documents. Thereafter the enquiry was being adjourned from time to time to enable the management to produce the relevant documents and the matter was adjourned to enable the management to consider the question of amicable settlement. On 21.8.93 and 29.8.93, certain documents, namely, C1 to C15 were marked on the later date. The new Principal Mrs. Umayal, who was not originally cited as witness and who was not in service during the alleged period of delinquency, was examined as a witness and documents M1 and M2 were marked. On 3.9.93 chief examination of such witness continued and documents M3 to M8 were marked. On the adjourned date, C10 to C40 were marked by consent and further examination was deferred. On the next day, document C41 was marked with consent and further examination was adjourned to 23.9.93. On 23.9.9 3, no intimation was received either from the school or the enquiry officer. Subsequently, on 13.12.1993, the school appointed one S. Muthukrishnan as enquiry officer in the place of previous enquiry officer Sri S. Veeraraghavan. The enquiry was fixed on 23.12.93. The reason for changing the enquiry officer was not disclosed. Mr. Deena Dayalu, Manager was appointed as the Presenting Officer. During the said period, the petitioner was on medical leave and had been admitted as an in-patient in K.M.C. Hospital and ultimately in Wellington Hospital. He was being treated as in-patient from 25.11.1993 till 7.12.1 993, but continued to remain under treatment after being discharged from the hospital. He reported back on 10.1.94. However, at that stage the petitioner was asked to appear before the Medical Board, as according to the management he was unfit to continue as a teacher. However, the Medical Board of Stanley Hospital gave a certificate that the petitioner was fit to continue.

Be that as it may, the petitioner was not assigned any class inspite of the certificate issued by the Medical Board. On resumption of enquiry on 11.2.94, it was represented by the petitioner that the previous enquiry officer and the presenting officer and the special committee of three members from the management had recommended for dropping the charges and for winding up the enquiry, and therefore, the management should drop the enquiry. The matter was adjourned to 22.2.94, on which date, the newly appointed presenting officer indicated that the enquiry officer had been changed for valid reasons

and the presenting officer had been changed due to administrative reasons, but no documents had been produced. In the meantime the petitioner was informed that charge Nos.5 & 6 need not be dropped. Subsequently, on 3.3,.1994 and 15.3.1994, cross-examination of MW1 was held in part and the matter was adjourned to 28.3.94 for further cross-examination. However, on 28.3.1994, the said witness even though present, was not tendered for further cross-examination and instead second witness was sought to be examined which was opposed by the petitioner. The second witness was examined and certain documents were marked even though he was not concerned with such documents. On 12.4.1994 such witness was examined in part and the matter was adjourned to 29.4.94 for further examination. On 29.4.1994, even though the petitioner was present, the enquiry could not be held due to the absence of the enquiry officer and the petitioner was told that the next date of enquiry would be notified. On the said date itself the petitioner gave a letter to the presenting officer addressed to the enquiry officer requesting the enquiry officer to hold enquiry after summer vacation as the petitioner was to attend two marriages in his native place in Kanyakumari district. The petitioner also indicated that he would also like to spend sometime with his old parents in his native place in Kanyakumari district and therefore, the enquiry should be held after 1.6.94. Subsequently, however, the school sent a letter dated 30.4.94 enclosing a telegram from the enquiry officer fixing the hearing date as 14.5.94. The petitioner immediately sent a letter dated 1.5.94 requesting to adjourn the enquiry after summer vacation enclosing a copy of invitation regarding the marriage which was scheduled to be held on 13 .5.94. However, such request was telegraphically rejected. It is the case of the petitioner that even though he had made arrangements to return to attend the enquiry, he suddenly fell ill and was admitted in Justin Hospital at Kulasekaram in Kanyakumari District. A telegram was sent to the enquiry officer informing him about the hospitalisation. A letter dated 14.5.94 enclosing the medical certificate was also sent. Inspite of the aforesaid letter, the enquiry officer closed the enquiry on 15.5.94 and submitted his findings holding the petitioner guilty of all the charges and the petitioner was asked to show cause as to why he should not be dismissed. The petitioner submitted his explanation dated 31.5.94 explaining the circumstances under which he could not attend the enquiry and requested to re-open the enquiry. It was also indicated that he wanted to examine the teachers, who, though cited as witnesses, were not examined. However, the Correspondent of the school passed an order dated 2.6.94 dismissing the petitioner from service. The petitioner filed appeal dated 7.6.94 before the Chairman of the disciplinary committee constituted under bye-law 50 of C.B.S.E. affiliation bye-laws framed by Central Board of Secondary Education. Before the Committee, the petitioner gave a representation requesting for enquiry. He was called upon to produce documents which he sent subsequently. However, nothing was intimated about the petitioner□s request represented through lawyer and his request for appointment of enquiry officer to be nominated by the CBSE. Subsequently, on 5.5.97, the petitioner was informed that the management committee has accepted the recommendation of the disciplinary committee in the meeting dated 25.4.97. The petitioner made further appeal dated 7.6.97 stating that disciplinary committee being the superior body should deal with the appeal. An order was passed on 20.6.97 stating that the disciplinary committee did not find any reason to interfere with the decision of the disciplinary committee. The

petitioner wrote a letter dated 2.3.98 stating that his appeal was not disposed of and no order was passed. Some further correspondence was made, but since no reply was received, ultimately the petitioner filed the present writ petition.

3. It has been contended by the petitioner in the writ petition and reiterated before this Court that the disciplinary proceedings were initiated on account of the fact that the petitioner had made a grievance before the High Court on earlier occasion regarding his degradation. It is further contended that the disciplinary proceedings was conducted in an injudicious manner and the enquiry officers appointed had been arbitrarily changed by the management. It is also indicated in this connection that the management had relied upon past record even though the petitioner was not put to notice which was in violation of principles of natural justice. It is further contended that dismissal order dated 2.6.94 was without jurisdiction as the same was passed by the Correspondent without getting prior approval of the management committee, as contemplated under bye-law 48(1)d iii, iv and 48(2). It is further contended that at any rate the disciplinary proceedings had been suddenly closed in the absence of the petitioner without giving him adequate opportunity, as he was not in a position to attend the proceedings due to his illness and even cross-examination of both management witnesses had not been completed. The petitioner has also been deprived of the opportunity of examining some of the witnesses cited as management witnesses. It is further contended that even assuming that allegations are true the order of dismissal is grossly disproportionate to the alleged misduty. It is further contended that even though bye law 50 of C.B.S.E. bye-laws provides for appeal against the order of dismissal passed after approval of the management committee, since the management committee has considered the decision of the appellate authority in the meeting held on 25.4.97, entire proceedings is vitiated. It is further contended that the procedure adopted by the disciplinary committee is against the principles of natural justice as the former principal and enquiry officer were enquired behind the back of the petitioner. It is further stated that even though the order dated 5.5.97 refers to action on the basis of the enquiry committee, no enquiry committee had been constituted and only an enquiry officer had been appointed, who had given the report.
It is further stated :
 . . . when the disciplinary committee is the appellate authority against the decision of the management committee, considering and approving the decision of the disciplinary committee by the management committee as stated in the letter dt. 5.5.97 of the Correspondent and in the letter dt. 20.6.97 of the Chairman of the disciplinary committee was illegal.
It is further stated by the petitioner :
 . . . the findings of the enquiry officer do not contain any reason whatsoever for his conclusion. There is absolutely no discussion on the documents produced and the witnesses examined in the enquiry. Even if it is an exparte enquiry, the enquiry officer was duty bound to give reasons for his conclusion.

4. A counter affidavit has been filed on behalf of the respondents refuting the contentions raised by the petitioner. It has been

indicated that opportunities had been given to the petitioner, but he had remained absent. It is further indicated that the enquiry officer had been changed due to administrative reason and the enquiry had not been conducted in any prejudiced manner. It has been further indicated that the order passed in the disciplinary proceedings had been challenged belatedly and at any rate subsequently the school has become matriculation and the writ petition is not maintainable.

5. The last contention regarding maintainability of the writ petition may be taken up first. It seems that the matter has been concluded by a Division Bench of this Court reported in 1999 WLR 23 (A.P. JOHN PAULRAJ v. CENTRAL BOARD OF SECONDASRY EDUCATION, REP. BY ITS CHAIRMAN, NEW DELHI AND 3 OTHERS) wherein after referring to earlier decisions of the Supreme Court and other High Courts, it was observed that since a school is discharging public duty relating to imparting of education, writ challenging the order of dismissal is maintainable.

6. In the present case, there are certain disturbing aspects which create doubts about the bonafides of the management in the matter relating to holding of enquiry. A perusal of the materials on record and the events make it clear that the action of the petitioner in trying to ventilate his grievance either before the High Court in the shape of Writ Petition No.15410 of 1990 or in the shape of filing revision before the CBSE authorities has not been taken in a proper spirit by the management. The materials on record, including the statement of M.W.1, clearly indicate that the petitioner, who was appointed against the post of trained graduate teacher was being paid the scale of pay applicable to such a post, was asked suddenly to take class to I and II std.. The petitioner protested at that stage and several letters have been written by him, but strangely enough, such letters were returned with a postal endorsement "refused". This is a strange phenomenon so far as the management is concerned. The management at that stage appears to have behaved like an ordinary litigant by refusing to receive the letters sent by the petitioner on numerous occasions and yet the management seems to have taken umbrage because the petitioner had expressed his grievance in the parents teachers meeting or in the writ petition filed by him or in his representation before the CBSE authorities.

7. It is already noticed that initially one retired Secretary had been appointed as the enquiry officer and subsequently one Advocate had been appointed, who had already started the enquiry. Subsequently he had been replaced by another person. The reasons for replacement even though stated to be "administrative" are not forthcoming. It is of course true that change of enquiry officer in the midstream by itself is not sufficient to vitiate the disciplinary proceedings, particularly when the petitioner has participated in the disciplinary proceedings before the subsequently appointed enquiry officer. But all these aspects, which have been noticed earlier, cannot be ignored altogether in the light of what happened subsequently. On 29.4.97, when the petitioner was present, the enquiry had to be postponed on account of the absence of the enquiry officer himself. At that stage, the petitioner

made a specific request that the matter should not be taken up during summer vacation as he would be going to his native place in Kanyakumari to remain with his old parents as well as to attend marriages of his close relations. This request was within the knowledge of the presenting officer to whom such a representation had been handed over. It is surprising that the enquiry officer thought it fit to fix a date in the middle of summer vacation.

8. Even the procedure adopted by the enquiry officer appears to be strange. M.W.1, who had been cross-examined in part, was suddenly with-held on the date fixed for further cross-examination even though she was present and another witness was tendered. Neither crossexamination of M.W.1 was over nor cross-examination of M.W.2 was over when the enquiry was suddenly closed on 15.5.98 on account of the absence of the petitioner. When the enquiry had to be post-poned earlier either on account of the absence of the enquiry officer himself or on account of other reasons not attributable to the petitioner, it appears very strange that the enquiry would be suddenly closed and report would be submitted finding the petitioner guilty on the basis of the unfinished statement of two witnesses. Even the enquiry report appears to be an enigma in the sense that the enquiry officer has merely noted the charges, noted the witnesses and the documents without actually noticing the contents of the statement of witness or the contents of numerous documents. The report of the enquiry officer reads like an award of an arbitrator, who is not required to give reasons for his award. It is of course true that the enquiry officer is not expected to write a judgment as in a civil court or in a criminal court, but the minimum requirement is that the enquiry officer should notice the relevant materials on record and apply his mind and should give a report which should contain reasons in brief, if not the detailed reasons. In the present case, a perusal of the enquiry report does not indicate that these aspects have been satisfied and a laconic report has been submitted holding that the petitioner is guilty of the charges. The disciplinary action subsequently taken on the basis of such report without indicating the application of mind cannot be sustained.

9. Submission of the learned counsel for the petitioner to the effect that the punishment imposed appears to be grossly disproportionate also appears to be correct. It is unnecessary to deal with this aspect. Since the enquiry has been conducted arbitrarily without giving sufficient opportunity and since the report of the enquiry officer and the subsequent disciplinary action cannot be sustained, it is obvious that the order of dismissal is liable to be quashed.

10. The normal course is to set aside the dismissal order and to reinstate the petitioner in service leaving it open to the respondents to continue the enquiry, recall M.Ws.1 & 2 for further crossexamination and give further opportunity to the petitioner to produce his witnesses and documents. However, in course of hearing of this writ petition, learned counsel for the respondents has made it amply clear that the petitioner has become a persona non grata and the management has lost confidence in him and instead of reinstating him, some compensation may be paid to him. As a matter of fact, learned counsel for the respondents has stated in course of hearing that the management would be prepared to pay a sum of Rs.1,60,000/- as compensation to

the petitioner.

11. Even though the aforesaid sum according to me appears to be very meagre and inadequate, I am prepared to accept the suggestion of the respondents that instead of reinstating and directing continuance of the petitioner as a teacher, compensation should be paid. Keeping in view the salary payable to the petitioner and the period still left in service and taking into account that the respondent is an educational institution and having regard to all the facts and circumstances of the case, I feel that interest of justice would be served by directing that a sum of Rs.3,50,000/- should be paid as compensation to the petitioner, if the management does not want the petitioner to continue as a teacher. On the other hand, if the management wants to reinstate the petitioner as a teacher, he may be reinstated in service and a consolidated sum of Rs.1,50,000/- shall be paid to him as backwages for the period from the date of dismissal till reinstatement, but the entire period should be counted towards service for the purpose of seniority, pension, etc.. In such an event, it would be open to the management if it so desires to continue with the disciplinary proceedings from the stage at which it was on 15.5.1994. The direction regarding payment of compensation or the alternate direction regarding reinstatement with payment of consolidated backwages, as the case may be, should be complied with within six weeks from the date of receipt of the order.

12. With the above observations, the writ petition is allowed in part to the extent indicated above. No costs.

Index : Yes
Internet : Yes

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To

1. Agarwal Vidyalaya & Junior College,
Represented by its Correspondent,
54, E.V.K. Sampath Road,
Vepery, Chennai 600 007.

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